

DAVIS & GILBERT LLP

Neal H. Klausner

nklausner@dglaw.com

Brandie J. Lustbader

blustbader@dglaw.com

1740 Broadway

New York, New York 10019

(T): (212) 468-4800

(F): (212) 468-4888

Attorneys for Defendant Everyday Health Media, LLC

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WEBMD LLC,

Plaintiff,

-against-

EVERYDAY HEALTH MEDIA, LLC,

Defendant.

14-cv-4446 (LTS)

**DEFENDANT EVERYDAY
HEALTH MEDIA, LLC'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant Everyday Health Media, LLC ("Everyday Health") hereby answers WebMD LLC's ("WebMD") Complaint as follows:

I. INTRODUCTION

1. Everyday Health denies the allegations in Paragraph 1 of the Complaint.
2. Everyday Health denies the allegations in Paragraph 2 of the Complaint, except admits that it is not a licensee of WebMD, and that WebMD is not the source of Everyday Health's information.
3. Everyday Health denies the allegations in Paragraph 3 of the Complaint.
4. Everyday Health denies the allegations in Paragraph 4 of the Complaint.

5. Everyday Health denies the allegations in Paragraph 5 of the Complaint.

6. Everyday Health denies the allegations in Paragraph 6 of the Complaint.

7. Everyday Health denies the allegations in Paragraph 7 of the Complaint, except admits that WebMD seeks certain remedies to this action, but denies that WebMD is entitled to any of the alleged remedies.

II. THE PARTIES

8. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, and therefore denies same.

9. Everyday Health admits the allegations in Paragraph 9 of the Complaint.

III. JURISDICTION AND VENUE

10. Everyday Health states that the matters asserted in Paragraph 10 of the Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

11. Everyday Health states that the matters asserted in Paragraph 11 of the Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

12. Everyday Health states that the matters asserted in Paragraph 12 of the Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial.

IV. FACTUAL BACKGROUND

13. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore denies same.

14. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint, and therefore denies same.

15. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, and therefore denies same.

16. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint, and therefore denies same.

17. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint, and therefore denies same.

18. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint, and therefore denies same.

19. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and therefore denies same.

20. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and therefore denies same.

21. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint, and therefore denies same.

22. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint, and therefore denies same.

23. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint, and therefore denies same.

24. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint, and therefore denies same.

25. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint, and therefore denies same.

26. Everyday Health denies the allegations in Paragraph 26 of the Complaint.

27. Everyday Health denies the allegations in Paragraph 27 of the Complaint.

28. Everyday Health denies the allegations in Paragraph 28 of the Complaint, except to the extent Paragraph 28 references a screenshot from the Google website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

29. Everyday Health denies the allegations in Paragraph 29 of the Complaint, except to the extent Paragraph 29 references a screenshot from Everyday Health's website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

30. Everyday Health denies the allegations in Paragraph 30 of the Complaint, except to the extent Paragraph 30 references content from Everyday Health's website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

31. Everyday Health denies the allegations in Paragraph 31 of the Complaint, except to the extent Paragraph 31 references content from Everyday Health's website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

32. Everyday Health denies the allegations in Paragraph 32 of the Complaint, except to the extent Paragraph 32 references content from Everyday Health's website, which speaks for itself.

Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

33. Everyday Health denies the allegations in Paragraph 33 of the Complaint, except to the extent Paragraph 33 references a screenshot from the Yahoo! website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

34. Everyday Health denies the allegations in Paragraph 34 of the Complaint, except to the extent Paragraph 34 references a screenshot from Everyday Health's website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

35. Everyday Health denies the allegations in Paragraph 35 of the Complaint, except to the extent Paragraph 35 references content from Everyday Health's website, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

36. Everyday Health denies the allegations in Paragraph 36 of the Complaint, except to the extent Paragraph 36 references screenshots from the AOL, Google, Ask, and Yahoo websites, which speak for themselves. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

37. Everyday Health denies the allegations in Paragraph 37 of the Complaint, except to the extent Paragraph 37 references content from a specific URL, which speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

38. Everyday Health denies the allegations in Paragraph 38 of the Complaint.

39. Everyday Health denies the allegations in Paragraph 39 of the Complaint.

40. Everyday Health denies the allegations in Paragraph 40 of the Complaint.

41. Everyday Health denies the allegations in Paragraph 41 of the Complaint.

42. Everyday Health denies the allegations in Paragraph 42 of the Complaint.

43. Everyday Health denies the allegations in Paragraph 43 of the Complaint.

44. Everyday Health denies the allegations in Paragraph 44 of the Complaint, except admits that Everyday Health is aware of and complies with the relevant laws of the United States and the State of New York, and to the extent Paragraph 44 references the content of a document filed with the U.S. Securities and Exchange Commission, the document speaks for itself. Everyday Health respectfully refers the Court thereto for the complete and accurate content and context thereof.

45. Everyday Health denies the allegations in Paragraph 45 of the Complaint.

46. Everyday Health denies the allegations in Paragraph 46 of the Complaint, except admits that it is not a licensee of WebMD.

47. Everyday Health denies the allegations in Paragraph 47 of the Complaint, except admits that WebMD seeks certain remedies in this action, but denies that WebMD is entitled to any of the alleged remedies.

FIRST CLAIM FOR RELIEF
(Trademark Infringement: 15 U.S.C. § 1114(a))

48. Everyday Health repeats and realleges the responses contained in Paragraphs 1-47 above as if fully set forth herein.

49. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint, and therefore denies same.

50. Everyday Health denies the allegations in Paragraph 50 of the Complaint.

51. Everyday Health denies the allegations in Paragraph 51 of the Complaint.
52. Everyday Health denies the allegations in Paragraph 52 of the Complaint.
53. Everyday Health denies the allegations in Paragraph 53 of the Complaint.

SECOND CLAIM FOR RELIEF
(Federal Unfair Competition: 15 U.S.C. § 1125(a))

54. Everyday Health repeats and realleges the responses contained in Paragraphs 1-53 above as if fully set forth herein.

55. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint, and therefore denies same.

56. Everyday Health denies the allegations in Paragraph 56 of the Complaint.
57. Everyday Health denies the allegations in Paragraph 57 of the Complaint.
58. Everyday Health denies the allegations in Paragraph 58 of the Complaint.

THIRD CLAIM FOR RELIEF
(Dilution: 15 U.S.C. § 1125(c))

59. Everyday Health repeats and realleges the responses contained in Paragraphs 1-58 above as if fully set forth herein.

60. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Complaint, and therefore denies same.

61. Everyday Health denies the allegations in Paragraph 61 of the Complaint.
62. Everyday Health denies the allegations in Paragraph 62 of the Complaint.

FOURTH CLAIM FOR RELIEF
(Unfair Competition Under New York Common Law)

63. Everyday Health repeats and realleges the responses contained in Paragraphs 1-62 above as if fully set forth herein.

64. Everyday Health denies the allegations in Paragraph 64 of the Complaint.
65. Everyday Health denies the allegations in Paragraph 65 of the Complaint.
66. Everyday Health denies the allegations in Paragraph 66 of the Complaint.
67. Everyday Health denies the allegations in Paragraph 67 of the Complaint.

FIFTH CLAIM FOR RELIEF
(Deceptive Acts and Practices: New York Gen. Bus. L. § 349)

68. Everyday Health repeats and realleges the responses contained in Paragraphs 1-67 above as if fully set forth herein.
69. Everyday Health denies the allegations in Paragraph 69 of the Complaint.
70. Everyday Health denies the allegations in Paragraph 70 of the Complaint.
71. Everyday Health denies the allegations in Paragraph 71 of the Complaint.
72. Everyday Health denies the allegations in Paragraph 72 of the Complaint.

SIXTH CLAIM FOR RELIEF
(False Advertising: New York Gen. Bus. L. § 350)

73. Everyday Health repeats and realleges the responses contained in Paragraphs 1-72 above as if fully set forth herein.
74. Everyday Health denies the allegations in Paragraph 74 of the Complaint.
75. Everyday Health denies the allegations in Paragraph 75 of the Complaint.
76. Everyday Health denies the allegations in Paragraph 76 of the Complaint.
77. Everyday Health denies the allegations in Paragraph 77 of the Complaint.

SEVENTH CLAIM FOR RELIEF
(Injury to Reputation and Business or Dilution: New York Gen. Bus. L. § 360-1)

78. Everyday Health repeats and realleges the responses contained in Paragraphs 1-77 above as if fully set forth herein.

79. Everyday Health denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint, and therefore denies same.

80. Everyday Health denies the allegations in Paragraph 80 of the Complaint.

81. Everyday Health denies the allegations in Paragraph 81 of the Complaint.

EIGHTH CLAIM FOR RELIEF

(Use of Name or Address With Intent to Deceive: New York Gen. Bus. L. § 133)

82. Everyday Health repeats and realleges the responses contained in Paragraphs 1-81 above as if fully set forth herein.

83. Everyday Health denies the allegations in Paragraph 83 of the Complaint.

84. Everyday Health denies the allegations in Paragraph 84 of the Complaint.

85. Everyday Health denies the allegations in Paragraph 85 of the Complaint.

DEFENSES

86. As further, separate defenses to the Complaint, without assuming the burden of proof of any such defense that rests with WebMD, Everyday Health states as follows:

First Defense

87. The Complaint fails to state a claim, in whole or in part, upon which relief can be granted.

Second Defense

88. WebMD's claims are barred, in whole or in part, because Everyday Health has not infringed or diluted any valid and enforceable trademark right, if any, owned by WebMD.

Third Defense

89. WebMD's claims are barred, in whole or in part, because Everyday Health did not use in commerce WebMD's trademark to identify any goods or services or to indicate the source of any goods or services.

Fourth Defense

90. WebMD's claims fail because there is no likelihood of confusion as to the source or sponsorship of the products or services sold by the respective parties.

Fifth Defense

91. Everyday Health has engaged in fair use pertaining to the trademarks identified in the Complaint.

Sixth Defense

92. All advertising statements made by Everyday Health are true and accurate.

Seventh Defense

93. The state law claims alleged in the Complaint are barred by federal preemption.

Eighth Defense

94. WebMD's claims are barred, in whole or in part, by the doctrines of waiver and/or estoppel.

Ninth Defense

95. WebMD's claims are barred, in whole or in part, by the doctrine of laches.

Tenth Defense

96. WebMD's claims are barred, in whole or in part, by the applicable statute of limitations.

Eleventh Defense

97. WebMD's claims are barred, in whole or in part, by the doctrine of unclean hands.

Twelfth Defense

98. WebMD's claims are barred, in whole or in part, because WebMD has not suffered any legally cognizable injury or damage.

Thirteenth Defense

99. WebMD's request for injunctive relief should be denied as unwarranted, moot, vague, and overly broad.

Fourteenth Defense

100. WebMD's damages, if any, are remote, uncertain, speculative, and without basis in law or in fact.

Fifteenth Defense

101. WebMD's claims are barred, in whole or in part, by WebMD's failure to mitigate damages.

Sixteenth Defense

102. WebMD's damages, if any, should be mitigated, in whole or in part, by the doctrine of innocent infringement and/or innocent intent.

Seventeenth Defense

103. Everyday Health intends to rely on or assert such other defenses that may become available or apparent during the course of discovery in this case and hereby reserves its right to amend its Answer to assert any such defense.

PRAYER FOR RELIEF

WHEREFORE Everyday Health requests that this Court enter a judgment in its favor and against WebMD as follows:

- A. Dismissing WebMD's Complaint in its entirety with prejudice;
- B. Awarding Everyday Health the costs of this suit, including reasonable attorneys' fees;

and

- C. Granting such other and further relief as the Court deems just and proper.

Dated: July 31, 2014
New York, New York

DAVIS & GILBERT LLP

By: /s/Neal H. Klausner
Neal H. Klausner
nklausner@dglaw.com
Brandie J. Lustbader
blustbader@dglaw.com
1740 Broadway
New York, New York 10019
(T): (212) 468-4800
(F): (212) 468-4888

*Attorneys for Defendant Everyday Health
Media, LLC*